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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Minoru KOYAMA

Group Art Unit: 1762

Application No.: 10/647,225

Examiner: A. BASHORE

Filed: August 26, 2003

Docket No.: 116742

For: FILM FORMING METHOD, FILM FORMING APPARATUS, METHOD OF MANUFACTURING DEVICE, AND APPARATUS FOR MANUFACTURING DEVICE

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant received a May 3, 2007 Notice of Non-Compliant Amendment, asserting that the February 20, 2007 Amendment is non-responsive for failing to respond to a double-patenting rejection in the January 18, 2007 Office Action. This assertion is respectfully traversed.

The January 18, 2007 Office Action does not contain a "double patenting" rejection. Instead, it only contains a "provisional double patenting" rejection. As asserted in the February 20, 2007 Amendment, the time for responding to this provisional rejection has not matured, because the scope of the claims of the asserted co-pending application and the present application is uncertain at this point.

Furthermore, the phrase "a patent" in 35 U.S.C. §101 refers to an issued patent. There is no provision that this phrase refers to a patent application. Thus, a delay in responding to a provisional double patenting rejection is not inconsistent with 35 U.S.C. §101.

As indicated in the February 20, 2007 Amendment, Applicants will respond to a double patenting rejection (not a provisional double patenting rejection), if issued in a subsequent Office Action, at the time when the co-pending application or the present application is allowed.

In view of the above, because none of the co-pending application and the present application has been allowed, a response to the provisional double patenting rejection is not required.

Accordingly, withdrawal of the Notice of Non-Compliant Amendment is respectfully requested.

Respectfully submitted,



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JAO:GXL/lmf

Date: May 24, 2007

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